

HEATHER S. WHITE (7674)  
DANI N. CEPERNICH (14051)  
SNOW CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
[hsw@scmlaw.com](mailto:hsw@scmlaw.com)  
[dnc@scmlaw.com](mailto:dnc@scmlaw.com)

*Attorneys for Defendants*

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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KENNETH COLONNA,

Plaintiff,

vs.

ROOSEVELT CITY, OFFICER PETE  
BUTCHER, OFFICER MARK CORNABY  
and OFFICER TIM MELLOR;

Defendants.

**ANSWER**

Case No. 2:19CV863 DBP

Judge Dustin B. Pead

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Defendants Roosevelt City (City), Officer Pete Butcher, Officer Mark Cornaby, and  
Officer Tim Mellor (collectively Defendants) answer Plaintiff's complaint as follows:

**FIRST DEFENSE**

Plaintiff's complaint fails to state a claim upon which this Court may grant relief.

**SECOND DEFENSE**

Defendants admit the City is a municipality incorporated under the laws of the State of  
Utah and that Officers Butcher, Cornaby and Mellor were, at the time of the alleged incident,

employed as a peace officers with the City. Defendants deny each and every other allegation of Plaintiff's Complaint except as specifically admitted.

### **THIRD DEFENSE**

This Court lacks subject-matter jurisdiction because Defendants did not violate Plaintiff's constitutional rights.

### **FOURTH DEFENSE**

Defendants did not violate Plaintiff's clearly-established, particularized, constitutional, statutory or common-law rights or privileges.

### **FIFTH DEFENSE**

Defendants acted in good faith, without malice, and their acts were justified and reasonable under the circumstances.

### **SIXTH DEFENSE**

Defendants are not liable under 42 U.S.C. § 1983 based on *respondeat superior* or any other theory of supervisory or derivative liability.

### **SEVENTH DEFENSE**

Any constitutional violation that allegedly occurred was not the result of a deliberately-indifferent custom, policy or practice of the City.

### **EIGHTH DEFENSE**

Defendants are entitled to absolute and/or qualified immunity.

### **NINTH DEFENSE**

The City cannot be liable for any wrongful conduct committed by the individual defendants which occurred outside the course and scope of employment.

#### **TENTH DEFENSE**

Defendants cannot be liable for any wrongful conduct committed by individuals or entities over which Defendants had no control.

#### **ELEVENTH DEFENSE**

Plaintiff was never seized.

#### **TWELFTH DEFENSE**

Plaintiff's claimed injuries were the result of an independent intervening and/or superseding cause.

#### **THIRTEENTH DEFENSE**

The officers had reasonable suspicion to detain and probable cause to arrest and prosecute Plaintiff for other offenses.

#### **FOURTEENTH DEFENSE**

Defendants are absolutely immune from any state law claims and those claims are barred by the Governmental Immunity Act of Utah, including, but not limited to, Utah Code Ann. §§ 63G-7-201, 63G-7-202 and 63G-7-301, and further by Plaintiff's failure to comply with the appropriate provisions of that Act, including, but not limited to Utah Code Ann. §§ 63G-7-401, 63G-7-402, 63G-7-403 and 63G-7-601. Accordingly, the Court lacks subject-matter jurisdiction with respect to any state law claims.

#### **FIFTEENTH DEFENSE**

Defendants' potential liability for any state law claims is limited to the maximum sum provided by Utah Code Ann. § 63G-7-604.

#### **SIXTEENTH DEFENSE**

The individual Defendants did not act, or fail to act, through fraud or willful misconduct, as required by Utah Code Ann. § 63G-7-202.

#### **SEVENTEENTH DEFENSE**

Any injury or damage Plaintiff sustained was caused or contributed to by his own fault, which equals or exceeds that of Defendants, if any, thus barring recovery pursuant Utah Code Ann. § 78B-5-817 through 78B-5-823.

#### **EIGHTEENTH DEFENSE**

Any injury or damage Plaintiff sustained was solely caused or contributed to by the fault of codefendants and/or third persons not presently parties to this action and fault should be allocated to each under Utah Code Ann. §§ 78B-5-817 through 78B-5-823.

#### **NINETEENTH DEFENSE**

Plaintiff failed to mitigate his damages, and thus, any potential recovery must be reduced or barred.

#### **TWENTIETH DEFENSE**

Plaintiff's claimed injuries predated the incident.

#### **TWENTY-FIRST DEFENSE**

Plaintiff's claims are barred by the public duty doctrine as well as the doctrines of waiver, laches and/or unclean hands, estoppel, consent, acquiescence, ratification, and release.

#### **TWENTY-SECOND DEFENSE**

Plaintiff is not entitled to a jury trial on any claims for equitable relief.

**TWENTY-THIRD DEFENSE**

Plaintiff's claims are barred by the statutes of limitations, Utah Code Ann. §§ 78B-2-307, 78B-2-304(4), and 63G-7-403.

**TWENTY-FOURTH DEFENSE**

Plaintiff's punitive damage claim is barred by, *inter alia*, the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, federal common law, Article I, Sections 7, 9, 10, 11, 12, 13, 18, 22 and 24 of the Utah Constitution, and the Governmental Immunity Act of Utah, § 63G-7-603.

WHEREFORE, Defendants request that the Court dismiss Plaintiff's complaint, that Plaintiff take nothing thereby and that the Court order Plaintiff to pay Defendants their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and Utah Code Ann. §§ 78B-5-825 and 78B-3-104.

**JURY TRIAL DEMANDED**

Defendants hereby request a jury trial on all claims at law.

DATED this 25<sup>th</sup> day of November, 2019.

SNOW CHRISTENSEN & MARTINEAU

/s/ Heather S. White

Heather S. White

Dani N. Cepernich

*Attorneys for Defendants*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of November, 2019, I electronically filed the foregoing ANSWER with the Clerk of the Court using the CM/ECF System:

Aaron W. Owens  
Hendricks & Owens, PLLC  
3610 N. University Ave., Ste. 275  
Provo, UT 84604  
[aaronwovens@gmail.com](mailto:aaronwovens@gmail.com)  
*Attorneys for Plaintiff*

/s/ Annette Gamero